

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge

Sacramento, California

**November 4, 2014 at 1:30 p.m.**

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1.     [14-29594](#)-C-13     ELIJAH MURRAY                     MOTION FOR RELIEF FROM  
          CMC-1             Pro Se                             AUTOMATIC STAY  
   10-1-14 [[11](#)]

COUNTY OF PLACER VS.

**CASE DISMISSED 10/15/14**

**Final Ruling:** No appearance at the November 4, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 1, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

County of Placer seeks relief from the automatic stay with respect to the real property commonly known as 600 Shady Oaks Lane, Newcastle, California. The moving party has provided the Declaration of Jenny McMurtry to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Jenny McMurtry Declaration states that the Debtor is delinquent \$23,551.52 in taxes on the subject property. Debtor was noticed on a sale of

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the property set for October 2, 2013 and was personally noticed of the sale on September 1, 2013. Debtor contacted Movant on June 5, 2013 and indicated he would pay the past due taxes; however, he filed for bankruptcy on September 26, 2013 instead. Debtor's first case was dismissed on October 15, 2013 (13-32528) for failure to file documents as Debtor filed no schedules.

The Declaration continues to testify that with regard to the current bankruptcy, a notice was sent for the sale on August 7, 2014 with the sale date set for October 1, 2014. On August 20, 2014, an individual named "Sherry" called Movant's office, identified herself as Debtor's girlfriend, and stated that Elijah Murray would pay the taxes. Movant could not contact Debtor. On September 5, 2014, Debtor contacted Movant and stated he would pay the taxes prior to the sale. Debtor did not pay the taxes but, instead, filed a second bankruptcy petition on September 26, 2014 and brought a copy of the petition to the Movant's office. Debtor's case was dismissed on October 15, 2014 for failure to file documents, as Debtor again did not file his Schedules.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the court cannot determine the total debt secured by this property; however, the debt amount includes \$23,551.52 secured by Movant's tax lien. The value of the property is estimated at \$181,004 per movant's pleadings.

Movant argues that it is entitled to an *in-rem* order on the basis that the Debtor's successive bankruptcy filings are in bad faith. Movant is requesting relief pursuant to 11 U.S.C. § 362(d)(4)(B).

A review of the docket in this case confirms the filing history detailed by Movant. 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (I) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by both the transfer of an interest in the property and the filing of multiple bankruptcy cases.

The court shall issue a minute order terminating and vacating the automatic stay to allow the County of Placer, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

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The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable State laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case file during that period.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.